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No. ___.

IN THE

Supreme Court of the United States

LOCAL 464A UFCW WELFARE REIMBURSEMENT PLAN,
Petitioner,

v.

PASCACK VALLEY HOSPITAL, INC.,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Do the federal courts have removal jurisdiction over a state-court lawsuit governed by federal common law, where the complaint does not identify the source of the common-law right?

PARTIES TO THE PROCEEDINGS BELOW

All parties to the proceedings in the courts below are listed in the caption.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner prays that the Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The decision of the District Court is unreported and is set forth at pages 24a to 25a of the Appendix (App. 24a-25a). The decision of the Court of Appeals, App. 1a-23a, is reported at 388 F.3d 393 (3d Cir. 2004).

On November 30, 2004, the Court of Appeals denied defendant-appellee's petition for rehearing *en banc*. App. 2a-3a. On December 23, 2004, the Court of Appeals recalled the mandate and filed an order amending the caption of its earlier opinion. App. 1a.

JURISDICTION

On January 31, 2005, Justice Souter granted petitioner's application for an extension of time until April 29, 2005. Case 04A664. This petition is timely under S.Ct.R. 13.5.

This Court has jurisdiction under 28 U.S.C. §1254(1), even though the Court of Appeals ordered a remand to state court. Under 28 U.S.C. §1447(d), orders of a district court remanding a case to state court for lack of federal jurisdiction are not subject to appellate review. *See, e.g., Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 127-128 (1995). In this case, however, the District Court did not remand the case to state court, but instead entered a final judgment on the merits. *See* App. 10a, 26a. This case was therefore properly "in" the Court of Appeals within the meaning of §1254(1). App. 10a. This Court, in turn, has consistently exercised *certiorari* jurisdiction under §1254(1) in cases where the district court did not order a remand but the court of appeals held that it should have. *See, e.g., City of Chicago v. Int'l College of Surgeons*, 522 U.S. 156 (1997); *Mesa v. California*, 489 U.S. 121 (1989); *Grubbs v. General Electric Credit Corp.*, 405 U.S. 699 (1972).

STATUTES INVOLVED

The federal-question jurisdiction statute, 28 U.S.C. §1331, provides:

> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

The federal removal statute, 28 U.S.C. §1441, provides in relevant part:

> (a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant

> or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. . . .
>
> (b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties.

STATEMENT OF THE CASE

A. Facts

Petitioner ("the Plan") is an employee welfare benefit plan regulated by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§1001-1461. The Plan provides reimbursement for out-of-pocket medical expenses for eligible participants employed in the retail food industry in New Jersey. App. 6a.

The Plan has a subscriber agreement with MagNet, Inc., a marketing consultant, which allows Plan members discounted rates for medical care provided by hospitals within the MagNet network. App. 6a. Under the MagNet contract, the Plan makes payment to network hospitals directly for medical services rendered to Plan participants and beneficiaries, if those persons execute assignments of their Plan benefits to the hospitals. App. 7a. If the Plan pays the claims within thirty days after they are submitted, the hospital accepts discounted rates for the medical services provided to participants. App. 7a.

Respondent Pascack Valley Hospital ("the Hospital") is a hospital in the MagNet network. App. 7a. In 1999, the Hospital treated two Plan participants, Betty Psaras and Kimberly Rovetto. App. 7a. The Hospital submitted claims for those participants' reimbursement benefits, and the Plan paid the claims at the discounted rates. App. 7a-8a. After accepting payment, the Hospital alleged that the Plan had not

paid the claims within the "discount period" of the MagNet subscriber agreement. App. 8a. The Hospital sought payment from the Plan for the difference between its full billing rates and the discounted rate. App. 8a.

B. Proceedings Below

On October 23, 2002, the Hospital filed a complaint in the Superior Court of New Jersey against the Plan. App. 8a. The Hospital's complaint alleged two common-law causes of action for unjust enrichment against the Plan, resulting from the Plan's alleged failure to pay the full balance of the claims. App. 27a-30a, First Count, ¶ 12; Second Count, ¶ 7.

The Plan removed the Hospital's complaint to the U.S. District Court for the District of New Jersey. App. 8a. On September 26, 2003, the District Court (Cavanaugh, J.) denied the Hospital's motion to remand the case to state court. App. 24a-25a. The District Court found ERISA jurisdiction over the Hospital's claims, and gave the Hospital the opportunity to refile its complaint to allege ERISA claims. App. 26a. The Hospital did not do so: it appealed the denial of its remand motion, electing to renounce any right to proceed in federal court. App. 10a.

The Third Circuit vacated the District Court's judgment and ordered remand to state court, finding no federal jurisdiction under 28 U.S.C. §1331. App. 11a-13a. The Third Circuit acknowledged Circuit precedent that there is a federal common law of ERISA applicable to claims that an ERISA Plan has unjustly retained money under a contract bearing on benefits. App. 12a, *citing Bollman Hat Co. v. Root*, 112 F.3d 113, 115 (3d Cir. 1997); *Airco Indus. Gases, Inc. Div. of the BOC Group, Inc. v. Teamsters Health & Welfare Pension Fund*, 850 F.2d 1028, 1033-34 (3d Cir. 1988); *N.E. Dep't ILGWU Health & Welfare Fund v. Teamsters Local Union No. 229 Welfare Fund*, 724 F.2d 147, 154-55 (3d Cir. 1985) (Becker, J., writing for himself). However,

the Third Circuit held that plaintiffs must deliberately invoke such federal common law before the federal courts may exercise removal jurisdiction. App. 12a. Because the Hospital's complaint was filed in state court, with no reference to the federal common law of ERISA, the Third Circuit held the Hospital's complaint was not removable. App. 12a. The Third Circuit held the federal character of the common law is merely a *defense* that may be raised in state court: "The Plan may be correct that, in interpreting the Subscriber Agreement, the federal common law of ERISA displaces state law. Nevertheless, potential defenses, even when anticipated in the complaint, are not relevant under the well-pleaded complaint rule." App. 12a-13a.[1]

REASONS FOR GRANTING THE WRIT

The Third Circuit's decision conflicts with decisions of this Court and several other Circuits, and raises an important question of federal law that this Court should resolve.

The Third Circuit's decision enforces that Circuit's formalistic reading of the "well-pleaded complaint" rule. This rule gives the plaintiff, not the federal court, the power to say what law underlies a common-law claim. The mere fact that a plaintiff has filed in state court will make the action unremovable, even if the action is really governed by federal common law. This approach conflicts with the decisions of this Court and most other Circuits defining when a state-law claim "arises under" federal law within the meaning of 28 U.S.C. §§1331 and 1441. This case gives this Court an opportunity to clarify this point for federal removal jurisdiction.

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[1] The Third Circuit went on in Part IV of its opinion, App. 13a-22a, to hold that plaintiff's claim is not subject to "complete preemption" under §502(a) of ERISA, 29 U.S.C. §1132(a). Petitioner does not seek certiorari as to this holding. Petitioner seeks review only of the Third Circuit's rejection of "arising under" jurisdiction under 28 U.S.C. §1331 in Part III of its opinion, App. 12a-13a.

The Third Circuit's rule is a vestige of code-pleading, abandoned in federal courts in 1938. Before 1938, federal law required plaintiffs to articulate precisely which law governs, as a condition for jurisdiction. Code-pleading has now given way to a notice-pleading regime, in which a plaintiff's pleading of facts will support federal jurisdiction even if the plaintiff does not specify the source of law.

This change has consequences for removal jurisdiction as well. Federal jurisdiction must now exist if the facts pled and relief sought actually arise under federal common law, no matter how much the plaintiff prefers a state forum.

A. The unsettled state of "arising under" jurisdiction

The problem of when a cause of action "arises under" federal law is a recurring one. Despite decisions like *Franchise Tax Board v. Const. Laborers Vacation Trust*, 463 U.S. 1, 14 (1983), and *Merrell Dow Pharmaceuticals, Inc. v. Thompson*, 478 U.S. 804, 816 (1986), commentators agree that the problem remains unsettled. "[I]t cannot be said that any clear test has yet been developed to determine which cases 'arise under' federal law. There is no single rationalizing principle that will explain all of the decisions on this point. The problem has been aggravated by the tendency of courts to repeat uncritically language from earlier decisions as a substitute for analysis of the case that is actually before them." Wright, Miller and Cooper, 13B *Federal Practice and Procedure*, Juris.2d §3562 (2005). *See also* Fuller, *Federal Question Jurisdiction*, Loy. L.A. L.Rev. 1443, 1444 (2004); Note, *Mr. Smith Goes to Federal Court: Federal Question Jurisdiction Over State Law Claims Post-Merrell Dow*, 115 Harv. L.Rev. 2272, 2282 (2002).

The problem is connected to the "well-pleaded complaint" doctrine associated with *Louisville & Nashville RR Co. v. Mottley*, 211 U.S. 149 (1908), and *Gully v. First National Bank*, 299 U.S. 109 (1936). Under this doctrine, the plaintiff

has the power to frame its pleadings, and its decision not to invoke a federal claim must be honored. "The party who brings a suit is master to decide what law he will rely upon and therefore does determine whether he will bring a 'suit arising under' . . . the law of the United States." *Fair v. Kohler Die & Specialty Co.*, 228 U.S. 22, 25 (1913).

Taken to its logical conclusion, this "master of the complaint" rule would make removal impossible whenever the plaintiff does not expressly acknowledge the federal nature of its claim. Yet in recent years, this Court has held that a state-court action may be removable over the plaintiff's objection when "it appears that some substantial, disputed question of federal law is a necessary element of one of the well-pleaded state claims, or that one or the other claim is 'really' one of federal law." *Franchise Tax Board*, 463 U.S. at 13; *City of Chicago v. Int'l College of Surgeons*, 522 U.S. 156, 164 (1997).

These opposing doctrines are not easily reconciled. *See* Miller, *Artful Pleading: A Doctrine In Search of a Definition*, 76 Tex. L.Rev. 1781, 1789 (1998). Courts must now decide when they must defer to a plaintiff's legal conclusion, and when courts may decide for themselves the federal nature of a claim, over the plaintiff's objection.

The problem is particularly acute when a plaintiff seeks relief under the common law, rather than a state statute. Unlike a statutory claim, a common-law claim typically does not identify the particular authority that created it. As in this case, App. 27a-29a, a common-law claim simply recites a grievance, pleads supporting facts, and asks the courts for relief. Such a complaint invokes judge-made law, without naming the judges or legal system that creates that law. *See* Bellia, *State Courts and the Making of Federal Common Law*, 153 U. Pa. L.Rev. 825, 840 (2005). The problem is whether the federal courts must defer to the plaintiff's view of which legal system has created this law.

B. The Third Circuit's formalistic reading of the "well-pleaded complaint" rule

In this case, plaintiff's complaint did not invoke any State legislation or statutory remedies. App. 27a-30a. The complaint alleged that the defendant, an employee benefits plan, had wrongfully retained money due the plaintiff hospital under the terms of a contract bearing on reimbursement benefits. Plaintiff claims the Plan has been unjustly enriched, and seeks relief. App. 29a-30a.

In this case, the Third Circuit recognized that there is a federal common law of ERISA[2] that governs claims that an ERISA Plan has unjustly retained money under a contract bearing on benefits. App. 12a, *citing Bollman Hat Co. v. Root*, 112 F.3d 113, 115 (3d Cir. 1997); *Airco Indus. Gases, Inc. Div. of the BOC Group, Inc. v. Teamsters Health & Welfare Pension Fund*, 850 F.2d 1028, 1033-34 (3d Cir. 1988); *N.E. Dep't ILGWU Health & Welfare Fund v. Teamsters Local Union No. 229 Welfare Fund*, 724 F.2d 147, 154-55 (3d Cir. 1985) (Becker, J., writing for himself). *See also McGurl v. Trucking Employees of New Jersey Welfare*

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[2] A majority of other circuits also recognize a federal common-law right arising under ERISA. *State Street Bank & Trust Co. v. Denman Tire Corp.*, 240 F.3d 83, 88 (1st Cir. 2001); *Provident Life & Accident Ins. Co. v. Waller*, 906 F.2d 985, 988 (4th Cir. 1990); *Whitworth Bros. Storage Co. v. Central States Pension Fund*, 794 F.2d 221, 235 (6th Cir. 1986); *but see Cooperative Benefit Administrators v. Ogden*, 367 F.3d 323, 328 (5th Cir. 2004); *Pacificare, Inc. v. Martin*, 34 F.3d 834, 836 (9th Cir. 1994).

This federal common-law action is independent of the equitable enforcement mechanism of §502 of ERISA, 29 U.S.C. §1132. *See N.E. Dep't ILGWU*, 724 F.2d at 156. A federal common-law action remains viable under ERISA even after *Great-West Life Ins. Co. v. Knudson*, 534 U.S. 204, 210 (2002), because the action is not created by the statutory limitations of §502 of ERISA. *See Empire Kosher Poultry, Inc. v. UFCW Health and Welfare Fund*, 285 F.Supp.2d 573, 579-582 (M.D.Pa. 2003) (federal-common-law remedies in Third Circuit are not limited by *Knudson*).

Fund, 124 F.3d 471, 476 (3d Cir. 1997) (suit between overlapping funds over which was liable for participant's care); *Plucinski v. IAM Nat'l Pension Fund*, 875 F.2d 1052, 1057-58 (3d Cir. 1989) (employer suit for unjust enrichment). Each of these cases involved disputes, like this one, between an ERISA Plan and a third party over the Plan's retention of money allegedly due under a contract bearing on Plan benefits. In *Plucinski* and *Airco*, the common-law claim was styled in the identical form as plaintiff's claim here—for unjust enrichment. The only difference between those cases and the present one is that the plaintiffs in *Plucinski* and *Airco* invoked federal jurisdiction by acknowledging the federal nature of their common-law claims.

The Third Circuit rejected federal jurisdiction, not because the plaintiff's pleading could not have been filed in federal court, but solely because the plaintiff did not explicitly invoke ERISA or its federal common law. App. 12a. The Third Circuit analyzed the state-court action as though the plaintiff brought a claim completely separate from federal law. In the Third Circuit's view, the federal courts are powerless to correct the plaintiff's legal conclusion that federal law does not govern.[3]

The Third Circuit's approach reflects the most rigid reading of the "well-pleaded complaint" rule in the Circuits. Removal here was not based on a federal *defense*. Federal common law does not extinguish the Hospital's claim—it is its legal source. Yet the Third Circuit held that the plaintiff's

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[3] The Third Circuit had earlier applied similar reasoning in rejecting removal of common-law claims in *Goepel v. Nat'l Postal Mail Handlers Benefit Plan*, 36 F.3d 306, 314-315 (1994) *cert. denied*, 514 U.S. 1063 (1995), and *Allstate Insurance Co. v. The 65 Security Plan*, 879 F.2d 90, 93-94 (3d Cir. 1989). In *Goepel* and *Allstate*, the Third Circuit rejected the argument that federal common law could authorize the removal of a state cause of action, where the plaintiff did not acknowledge the application of federal law to the complaint.

characterization of the claim as a creature of state law, however erroneous, precluded removal. According to the Third Circuit, a court could only correct the plaintiff's error by adjudicating a defense, not by declaring the true legal source of plaintiff's common-law claim. App. 12a-13a.

The strange result of the Third Circuit's rule is that a complaint that might have been *filed* in federal court may not be *removed* there. The plaintiff could have filed the identical unjust-enrichment action in federal court, with the same factual allegations and common-law claims. Even though the plaintiff did not identify ERISA or federal common law, the federal court could have entertained it under 28 U.S.C. §1331. *See Schlesinger v. Councilman*, 420 U.S. 738, 742 & n.5 (1975) (complaint's failure to specify basis for jurisdiction not fatal: "we think that so long as the court's subject matter jurisdiction actually existed . . . any defect in the manner in which the action was instituted and processed is not itself jurisdictional . . ."). Yet in the Third Circuit's view, the plaintiff's mere decision to file a common-law claim in state court is an implicit declaration, however erroneous, that federal law does not apply.

The Third Circuit's decision is contrary to this Court's explanation in *City of Chicago v. Int'l College of Surgeons*, 522 U.S. 156, 164 (1997), that a case is removable if it could have been brought in federal court in the first instance. In *City of Chicago*, a property owner framed a state-law cause of action that in essence asserted federal constitutional rights against the City. The City removed, but the Seventh Circuit ordered the case remanded to state court, on the ground that as master of the complaint, the property owner had a right to style its action under state law. This Court reversed and upheld the removal. It acknowledged that the federal claims "were raised by way of a cause of action created by state law." 522 U.S. at 164. But it reaffirmed that "even though state law creates [a party's] cause of action, its case might

still 'arise under' the laws of the United States if a well-pleaded complaint established that its right to relief under state law requires resolution of a substantial question of federal law." *Id.*, *quoting Franchise Tax Board*, 463 U.S. at 13. The Court concluded that because the property owner's use of state law to enforce federal constitutional rights "arose under" federal law, removal was proper: "Accordingly, [the property owner] errs in relying on the established principle that the plaintiff, as master of the complaint, can 'choose to have the cause heard in state court.' [cit.om.] By raising several claims that arise under federal law, [the property owner] subjected itself to the possibility that the City would remove the case to the federal courts." *City of Chicago*, 522 U.S. at 164.

This "arising under" removal jurisdiction in *City of Chicago* was not predicated on complete preemption. The federal claims at issue there (takings claims under the Fifth and Fourteenth Amendments) were not part of any complete-preemption exception. Yet if a state-law cause of action "arises under" federal law, it is removable even if the plaintiff does not acknowledge it, and even if the federal law does not completely preempt state law. This Court now treats removal jurisdiction as coextensive with the power of a federal court to hear the case if it had been brought in federal court in the first instance. *Wisconsin Dep't of Corrections v. Schacht*, 524 U.S. 381, 390 (1998) ("Since a federal court would have original jurisdiction to hear this case had [the plaintiff] originally filed it there, the defendants may remove the case from state to federal courts.").

C. The Third Circuit's rule is a vestige of code-pleading.

The Third Circuit's decision is not an isolated failure to follow this Court's direction. It reflects an unconscious hold-over from the era of code pleading. The Court should take this case to clarify and correct this persistent error.

Judge Easterbrook has explained why the continued adherence to code pleading has complicated federal jurisdiction. In *Int'l Armor & Limousine Co. v. Moloney Coachbuilders, Inc.*, 272 F.3d 912, 915 (7th Cir. 2001) *cert. denied*, 535 U.S. 1078 (2002), and *Bartholet v. Reishaeur A.G.*, 953 F.2d 1073, 1078 (7th Cir. 1992), Judge Easterbrook noted that the seminal cases defining the "well-pleaded complaint" rule (like *Gully* and *Mottley*) were decided under the pre-1938 regime of code pleading. This system required the plaintiff to specify the legal theory on which the action was based: "Common law pleading required the advocate to match facts to a legal theory . . . Code pleading ended up in much the same place, as courts read the code formula 'facts constituting a cause of action' to require the pleader to state a legal theory." *Bartholet*, 953 F.2d at 1078. After the 1938 change to notice pleading, the plaintiff's declaration of its legal theory is no longer essential to jurisdiction: "[U]nder the Federal Rules of Civil Procedure the concept of "cause of action" as Holmes used it—a reference to a code-pleading regime in which law was essential to the plaintiff's complaint—has vanished from federal law and been replaced by notice pleading, which need not specify a source of law." *Moloney Coachbuilders*, 272 F.3d at 915.

This change from code pleading to notice pleading gives courts, rather than plaintiffs, the power to define the law governing a claim. "Under the Federal Rules, courts rather than parties decide which rules of law govern the disputes . . . Although the well-pleaded complaint doctrine of *Gully* [cit om.] establishes that the federal element must be part of the plaintiff's claim (as opposed to a defense), it does not mean that the plaintiff may maneuver a case into or out of federal court at will by including or omitting federal aspects. In our notice-pleading regime (adopted two years after *Gully*) the district court looks past surface allegations to make its own assessment of what law the claim arises under." *Moloney Coachbuilders*, 272 F.3d at 915.

This Court should adopt Judge Easterbrook's analysis. The Third Circuit's absolutist approach to the "well-pleaded complaint" rule reflects the assumptions of the code-pleading era, in which the plaintiff's articulation of a legal theory was decisive for jurisdiction. After the demise of code pleading, the plaintiff's allegation of facts, and claim for common-law relief, is enough to support federal jurisdiction. The federal courts need no longer defer to a litigant's erroneous characterization of the law governing a common-law complaint.

D. The Third Circuit's rule is in conflict with several other Circuits, affecting many areas of federal law.

The Third Circuit decision here is not an isolated error. The Third Circuit earlier applied similar reasoning in rejecting removal of common-law claims in *Goepel v. Nat'l Postal Mail Handlers Benefit Plan*, 36 F.3d 306, 314-315 (3d. Cir. 1994) *cert. denied*, 514 U.S. 1063 (1995) (3d. Cir. 1994) and *Allstate Insurance Co. v. The 65 Security Plan*, 879 F.2d 90, 93-94 (3d Cir. 1989). In *Goepel* and *Allstate*, the Third Circuit rejected the argument that federal common law could authorize the removal of a state cause of action, where the plaintiff did not acknowledge the application of federal law to the complaint.

The Third Circuit recognized in *Goepel* that its approach to "arising under" jurisdiction conflicts with other Circuits'. *Goepel*, 36 F.3d at 313-315, went to great lengths to criticize the Fourth Circuit's contrary approach in *Caudill v. Blue Cross and Blue Shield*, 999 F.2d 74, 77 (4th Cir. 1993). The conflict between the Third and the Fourth Circuit is especially sharp here. The Fourth Circuit (in direct contrast to this decision) holds that a state-court common-law action that does not specify the source of law is removable if the federal court concludes that the law is federal. *Battle v. Seibels Bruce Ins. Co.*, 288 F.3d 596, 607 (4th Cir. 2002) ("Battle's

complaint does not specify upon what law, state or federal, he premises either of these claims. Accordingly, we cannot conclude that Battle's complaint establishes that federal law creates either claim. However, we do conclude that Battle's complaint establishes that Battle's right to relief under either claim 'necessarily depends on resolution of a substantial question of federal law.' [cit. om.] . . . [T]he law is well settled that federal common law alone governs the interpretation of insurance policies issued pursuant to the NFIP.")

This problem occurs in many areas of federal law where there is no recognized "complete preemption," but where actions brought in state court arise under federal common law. In addition to the contrary law in the Fourth and Seventh Circuits, several other Circuits' resolution of state-law claims conflict with the Third Circuit's approach.

As to state-law claims that implicate the federal "filed rate" doctrine, the Second, Ninth and Eleventh Circuit have allowed "arising under" removal over state-court actions that the courts judged were actually challenges to the federal tariffs. *Marcus v. A T & T Corp.*, 138 F.3d 46, 55-56 (2d Cir. 1998) (state-court action for breach of warranty removable because it challenges tariffs filed with the FCC: "A complaint which appears to be grounded solely in state law actually may be federal in nature, and thus removable, if its true nature has been disguised by the plaintiff's artful pleading."), *California ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 837 (9th Cir. 2004) ("the rule that state law claims cannot be alchemized into federal causes of action by incidental reference . . . has no application when relief is partially predicated on a subject matter committed exclusively to federal jurisdiction"), *cert. denied*, ___ U.S. ___, 73 USLW 3466 (2005); *Hill v. BellSouth Telecommunications, Inc.*, 364 F.3d 1308, 1314-15 (11th Cir. 2004) (although plaintiff is the master of the complaint, state-law claims attacking the application of an FCC-filed tariff were removable because they raised federal questions).

The Second and Ninth Circuits permit removal of state-law actions as "arising under" the securities laws where the court concludes they allege violations of federal securities laws. *D'Alessio v. New York Stock Exchange*, 258 F.3d 93, 99-103 (2d Cir.) (plaintiff pleads common-law claims under New York law, but the case is removable because the claims allege violations of federal securities regulations) *cert. denied*, 534 U.S. 1066 (2001); *Sparta Surgical Corp. v. Nat'l Ass'n of Securities Dealers*, 159 F.3d 1209, 1212-12 (9th Cir. 1998) (plaintiff pleads common-law claims under California law, but case is removable because the claims allege violations of federal securities regulations: "A plaintiff may not avoid federal jurisdiction by omitting from the complaint federal law essential to his or her claim or by casting in state law terms a claim that can be made only under federal law.").

If the Third Circuit's approach were correct, none of these claims could have been removed to federal court. The plaintiff's choice to ignore the federal basis of the common-law claim would have been enough to defeat removal.

The doctrines of the "well-pleaded complaint" and the bar against "artful pleading" should have consistent application. They should not be mere slogans to justify removal or remand at the court's discretion. This Court should grant certiorari to clarify this unsettled issue in federal jurisdiction.

CONCLUSION

The Court should grant the petition for certiorari.

Respectfully submitted,

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